

ANGAMMAL
 "
 VENKATA
 REDDY.

rate of Rs. 20 a month for three years prior to plaint and from date of plaint till delivery of possession.

Messrs. *Branson & Branson* - -Solicitors for respondents.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

NARAYANA ROW (THIRD DEFENDANT), APPELLANT,

v.

DHARMACHAR (PLAINTIFF), RESPONDENT.*

Specific Relief Act—I of 1877—Amendment Act—XII of 1891, s. 9—Possession as title against all but true owner—Effect of Specific Relief Act even where suit is brought more than six months after dispossession.

Possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrong-doer, prior possession of the plaintiff, in an action of ejection, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person.

The only effect of section 9 of the Specific Relief Act is that a person who has been dispossessed otherwise than in due course of law and who brings a summary suit within the time prescribed by that section, is entitled to be reinstated even if the defendant by whom he was dispossessed be the true owner or a person authorized by or claiming under him. But a decree passed in such a suit will not have the force of *res judicata* on the question of title.

Nisa Chand Gaito v. Kanchiram Bayani, (1.L.R., 26 Cal., 579), dissented from.

STILL to establish title to and recover possession of a house. The following statement of facts material to the decision is taken from the judgment of the High Court:—

The facts found by the lower Appellate Court and which, in second appeal, we have to accept are, that the uncle of the plaintiff one Jayachar was in possession of the site mentioned in the plaint since 1888, that he let defendants Nos. 1 and 2 into possession of the same in 1892 under a lease for a term of five years, that the third

* Second Appeal No. 679 of 1901, presented against the decree of Leslie C. Miller, District Judge of Salem, in Appeal Suit No. 225 of 1899, presented against the decree of A. Sreenivasa Ayyangar, District Munsif of Krishnagiri, in Original Suit No. 659 of 1898.

defendant, the appellant in this Court, obtained possession of the same from the first and second defendants and that Jayachar died in 1898, shortly before the institution of this suit, leaving a will devising the site to the plaintiff and admitting in the description of the site that it had all along been the plaintiff's property and that he Jayachar held it only as the plaintiff's agent. The District Judge also finds that the case of the third defendant that the site belongs to him and that his agent allowed defendants Nos. 1 and 2 to enter into possession thereof is false, but that he obtained possession from the first and second defendants during the term of the lease under which they had been let into possession by the plaintiff's uncle. On the footing that up to the date of his death or, at any rate, until the third defendant obtained possession of the site from the first and second defendants, Jayachar was in possession of the site, through his tenants, defendants Nos. 1 and 2, either on his own behalf or as agent of the plaintiff, and in the former case, the plaintiff derives title to possession under the will of Jayachar. The District Judge decreed in favour of the plaintiff and reversed the Munsif's decree, which dismissed the plaintiff's suit on the ground that the plaintiff did not establish his title to the site.

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Third defendant preferred this second appeal.

Mr. Joseph Satya Nadar and T. Natesa Ayyar for appellant.

P. S. Sivaswami Ayyar for respondent.

JUDGMENT.—The appellant's counsel contends that the decree of the District Judge cannot be supported as he does not find that the plaintiff has made out his title, that the possession which he finds in favour of Jayachar, assuming that such possession will enure to the benefit of the plaintiff, not being for the statutory period, can give the plaintiff no title by prescription and that therefore the District Munsif's decree ought to be restored, notwithstanding that both the Courts have found that the third defendant has failed to establish title in himself.

The District Munsif found that neither the plaintiff nor the third defendant was the owner of the site, but that one Srinivasa Row was the owner, and that on his death his sons have become entitled to the same as his heirs. If, as found both by the District Munsif and the District Judge, Jayachar was in possession since 1888, it must be presumed that he was the owner thereof, and that if he had held such possession on behalf of and as agent for the plaintiff, the plaintiff must be presumed to be the owner

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(section 110 of the Indian Evidence Act). Though this presumption is rebuttable and, as found by the District Munsif, it has been rebutted, it is unnecessary to call upon the District Judge to submit a finding as to whether or not he concurs in the finding of the District Munsif that Srinivasa Row's sons are the owners of the site; for even in the view that they were the owners at the date of this suit the District Judge was right in holding that Jayachar's possession, whether it was on his own behalf or as the plaintiff's agent, was sufficient to entitle the plaintiff to recover the site from the third defendant who has established no title to the same nor possession prior to that of Jayachar and who, by wrong, obtained possession of the site from the first and second defendants as if they had been let into possession by himself and they had surrendered the same to him, and who has been withholding possession of the site from Jayachar and the plaintiff since and subsequent to the determination of the lease under which the first and second defendants were holding under Jayachar. In the language of modern English authorities, possession is good title against all but the true owner and a person in peaceable possession of land has, as against every one but the true owner, an interest capable of being inherited, devised or conveyed (*Asher v. Whitlock*(1)). As observed by Subramania Ayyar, J., in *Mustapha Sahib v. Santhu Pillai*(2) the above principle of law is "so firmly established as to render a lengthened discussion about it quite superfluous". There is nothing in the Indian law which militates against this principle and with all respect, we are wholly unable to concur in the view taken by the Calcutta High Court in *Nisa Chand Gaita v. Kanehiram Bagani*(3) that previous possession for any time short of the statutory period will not entitle a plaintiff to a decree for recovery of possession in a suit brought more than six months after dispossession, even if the defendant could not establish any title to the disputed land. In our opinion section 9 of the Specific Relief Act, corresponding to section 15 of Act XIV of 1859, is in no way inconsistent with the position that as against a wrong-doer, prior possession of the plaintiff in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession

(1) L.B., 1 Q.B., 1 at p. 6.

(2) I.L.R., 23 Mad., 179 at p. 183.

(3) I.L.R., 26 Cal., 579.

complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person. A plea of *jus tertii* is no defence unless the defendant can show that the act complained of was done by the authority of the true owner (*Graham v. Peat*(1), *Chambers v. Donaldson*(2)) and it is immaterial however short or recent the plaintiff's possession was (*Catteris v. Cowper*(3), *Doe d. Hughes v. Dyeball*(4)). The only effect of section 9 of the Specific Relief Act is that if a summary suit be brought within the time prescribed by that section, the plaintiff therein who was dispossessed otherwise than in due course of law will be entitled to be reinstated even if the defendant who thus dispossessed him be the true owner or a person authorised by or claiming under him, but a decree in such a suit will not have the force of *res judicata* on the question of title.

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The rule of English law that possession is good title against all but the true owner was adopted and enforced by the Judicial Committee of the Privy Council in the Indian cases *Sundar v. Parbati*(5) and *Ismail Ariff v. Mahomed Ghous*(6). In *Sundar v. Parbati*(5) the Judicial Committee observed that the Chief Justice of the Allahabad High Court was right in his statement of the law that according to the import of the authorities cited by him "possession is a good title against all the world except the person who can show a better title. By reason of his possession such person has an interest which can be sold or devised". But their Lordships being of opinion that the Chief Justice erred in not applying that law to the facts of that case held that the widows of a deceased Hindu had a possessory title or interest in his estate, notwithstanding that a preferable title might exist in others through the deceased devisee of their husband and that the estate being jointly held by the widows, though for a time short of the statutory period after the death of the devisee, was partible between the widows and that either widow might maintain a suit for partition against the other.

In *Ismail Ariff v. Mahomed Ghous*(6) it was held that possession of land was sufficient evidence of right as owner as against a person who had no title whatever, and that the plaintiff was

(1) 1 East., 244.

(3) 4 Taunt., 547.

(5) I.L.R., 12 All., 51 at p. 56.

(2) 11 East., 65.

(4) 1 Moo. and M. 346.

(6) I.L.R., 20 Calc., 834.

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entitled to obtain a declaratory decree and an injunction restraining the wrong-doer from interfering with his possession.

The principle underlying the rule of law in question seems to be that acquisition of title by operation of the law of limitation being a lawful mode of acquiring title, the person in peaceable possession is entitled to maintain such possession against all but the true owner and that therefore a third party who has no better title than the person in possession has no right to invade upon the possession of the latter and interrupt or arrest his lawful acquisition of title by his continuing to remain in possession for the statutory period. It is the true owner alone that is entitled to assert his title as against the person wrongfully in possession, and prevent such wrongful possession ripening into prescriptive title. But a third party who without deriving title under the true owner and without his authority, interrupts such possession before it has ripened into prescriptive title, is a trespasser, not only against the true owner, but also against the party actually in possession; and, subject to the law of limitation, either of them is entitled to maintain a suit in ejectment against such intruder as a trespasser.

As the second appeal fails on this ground, it is unnecessary to consider the other ground on which also the decision of the District Judge is based. The second appeal is therefore dismissed with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.

G. VEERASWAMY (PLAINTIFF), APPELLANT,

v.

MANAGER, PITTAPUR ESTATE (DEFENDANT), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 588 (28)—Appeal against order remanding case for disposal—Decision by Sub-Collector in summary suit under Rent Recovery Act—Remand by District Court—Appeal—Rent Recovery Act—VIII of 1865, s. 69—“Judgment.”

In a summary suit under the Rent Recovery Act, the Sub-Collector held a patta to be improper and released certain property from attachment. On an

* Appeal against Order No. 9 of 1902, presented against the order of remand by F. H. Hamnett, District Judge of Godavari, in Appeal Suit No. 59 of 1901, presented against the decision of P. S. P. Rice, Sub-Collector of Godavari, in Summary Suit No. 17 of 1900.